

D. Schmaier  
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DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548

8898

FILE: B-193043

DATE: January 19, 1979

MATTER OF: Gregory Elevator Inc.

*[Protest of RFP Cancellation and Subsequent Resolicitation on  
Unrestricted Basis of Small Business  
Set-aside]*

DIGEST:

Where low offer of two received on small business set-aside was not from small business and other offer, <sup>SUBSTANTIAL PROBLEM</sup> exceeded procurement estimate by ~~27.7 percent~~, low unacceptable offer by ~~33.9 percent~~, and previous year's price by ~~35.4 percent~~, cancellation of RFP and subsequent resolicitation on unrestricted basis was proper. ①

DLG 00673 ✓ Gregory Elevator Inc. (Gregory), a small business, protests both the cancellation of request for proposals (RFP) No. SS-0703-783H, a small business set-aside issued by Fermi National Accelerator Laboratory (Fermilab), a prime management contractor for the Department of Energy, and the resolicitation on an unrestricted basis. AGC 00912

DLG 00674

The RFP, issued to four firms, represents a 1-year contract for elevator maintenance for the Government-owned, contractor-operated plant. We assume jurisdiction of the protest under the standards of Optimum Systems, Inc., 54 Comp. Gen. 767 (1975), 75-1 CPD 166.

DLG 00675

Gregory and Reliance Elevator Company (Reliance) were the only two companies to submit proposals. Review by Fermilab resulted in the finding that Reliance had incorrectly certified itself as a small business and Reliance was advised that its offer could not be considered. On the basis of Fermilab Procurement Manual §§ IIID.1.(c) and IIIF.2.(c) and Federal Procurement Regulations (FPR) § 1-2.404-1(b)(5) (1964 ed., amend. 121), Fermilab withdrew the set-aside and canceled the RFP because it determined that the only acceptable offer was unreasonable as to price. The next day, RFP No. SS-0908-782H was issued to six firms on an unrestricted basis.

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In deciding to cancel the RFP, the Fermilab contracting officer considered last year's contract price, Fermilab's own estimate and the offer by Reliance. A comparative analysis of the criteria used by the contracting officer revealed the following:

		Percentage Difference Between Gregory Offer
Gregory	\$14,904.00	---
1977-1978	11,010.00	35.4
Fermilab Estimate	11,670.60	27.7
Reliance Proposal	11,125.80	33.9

The purpose of the Small Business Act, 15 U.S.C. § 631 (1976), is "to insure that a fair proportion of the total purchases and contracts or subcontracts for property and services for the Government (including but not limited to contracts or subcontracts for maintenance, repair, and construction) be placed with small-business enterprises." The Government may pay a premium price to small business firms on restricted procurements to implement this policy. 53 Comp. Gen. 307 (1973); 41 id. 306 (1961). Although an award can be made on a small business set-aside at a price above that obtainable on the open market from large business firms, an excessive and unreasonable price may not be paid. Society Brand, Inc., et al., 55 Comp. Gen. 475 (1975), 75-2 CPD 327. The withdrawal of a set-aside based upon a proper determination that prices received from small business concerns are unreasonable represents a valid exercise of the authority of the contracting agency. North American Signal Company, B-190972, May 19, 1978, 78-1 CPD 387.

Therefore, the only issue for our consideration is the reasonableness of the determination that Gregory's price was unreasonable. Berlitz School of Languages, B-184296, November 28, 1975, 75-2 CPD 350.

Gregory contends that the contracting officer incorrectly compared its offer to the unacceptable offer of Reliance. Gregory contends that this comparison is in direct violation of Fermilab's policy, § IIIF.2.(c)(1)(a). Gregory also contends that the contracting officer failed to consider the previous year's bid of Armor, the manufacturer, which was close to Gregory's price. Also, Gregory points out that Fermilab's estimate was computed by adding 6 percent to Reliance's previous year's contract price and that the computation was unrealistic considering double digit inflation.

A determination that an offer is not reasonable is a matter of administrative discretion that our Office will not question unless it is unreasonable or there is a showing of bad faith or fraud. Support Contractors, Inc., B-181607, March 18, 1975, 75-1 CPD 160; Schottel of America, Inc., B-190546, March 21, 1978, 78-1 CPD 220. The determination can be based upon comparison with the Government estimate, past procurement history, current market conditions, or other relevant factors, including those that were disclosed in the competition. Schottel of America, Inc., supra.

Although Fermilab's manual fails to specifically provide for comparison with unacceptable offers, it does not prohibit the comparison. Fermilab Procurement Manual § IIIF.2.(c). This Office has held that offers made by big businesses on small business procurements are regarded as courtesy offers and may be considered in determining whether small business offers submitted are reasonable. 49 Comp. Gen. 740 (1970). The contracting officer was correct in using the Fermilab estimate although only 6 percent was added from the previous year's cost for inflation. We have recognized the inexact nature of Government estimates and have allowed rough estimates to be used. See Schottel of America, Inc., supra. Also, even if Fermilab had added 10 percent for inflation, Gregory's offer would still have been more than 23 percent above the Fermilab estimate. We have upheld the rejection of offers and resolicitation

where the lowest eligible bid exceeded the Government estimate by as little as 7.2 percent, see Building Maintenance Specialties, Inc., B-186441, September 10, 1976, 76-2 CPD 233, and where it was 13 percent greater than an unacceptable low offer. Colonial Ford Truck Sales, Inc., B-179926, February 19, 1974, 74-1 CPD 80. Finally, the fact that Gregory's bid was in line with Armor's rejected offer of last year does not make the contracting officer's decision unreasonable.

In view of the above, we cannot say that Fermilab's decision to cancel the RFP and resolicit on an unrestricted basis was unreasonable as being in violation of the contractor's procurement practices or any "Federal norm." See Optimum Systems, Inc., supra.

The protest is denied.

*R. F. K. M.*

Deputy Comptroller General  
of the United States